FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

APR 23 2008

DAVID J. MALAND, CLERK
BY
DEPUTY ______________

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JANE DOE IX, Individually, and as Next Friend of JULIE DOE IX, a Minor, Plaintiff, v. MYSPACE, INC., Defendant.	§ § § § § § § § § §	CIVIL ACTION NO. 4:08cv140 **JURY**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446, and 28 U.S.C. § 1332, Defendant MySpace, Inc. ("MySpace") hereby removes to this United States District Court for the Eastern District of Texas, Sherman Division, that certain civil action styled *Jane Doe IX, Individually, and as Next Friend of Julie Doe IX, a Minor v. My Space, Inc.*, Cause No. CV08-00112 in the 235th Judicial District Court of Cooke County, Texas. As grounds for their removal of this action, MySpace respectfully shows the Court as follows:

I.
STATEMENT OF THE CASE

1. In this lawsuit, Plaintiff Jane Doe IX, individually, and as next friend of Julie Doe IX, a minor ("Plaintiffs"), claim that MySpace provided a social networking website that allowed a sexual predator to contact, seduce, meet, and later assault 15-year-old Julie Doe IX. *See* Appendix at Tab B (Plaintiffs' Second Amended Petition ("Second Amended Petition") at ¶¶ 1, 8). Plaintiffs request actual damages for past and future pecuniary loss, mental anguish, psychological trauma, pain and suffering, emotional distress, and medical and psychological

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counseling expenses. *Id.* at p.14. Plaintiffs also seek punitive damages, exemplary damages, and attorneys' fees. *See id.*

2. As will be demonstrated below, there is complete diversity of citizenship between the parties to this action and, thus, this action is removable pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1446(b), and 28 U.S.C. § 1332.

II.
BASIS FOR REMOVAL

28 U.S.C. § 1441(a) generally provides that a defendant may remove any civil action brought in a state court to the district court of the United States located in the district and division where the action is pending if that court possesses original jurisdiction over the matter. The three jurisdictional requirements for removal are satisfied here.

A. Complete Diversity of Citizenship Exists.

1. Pursuant to 28 U.S.C. § 1332, this action could have originally been filed in this Court because this Court has diversity jurisdiction over all claims asserted in this action. Complete diversity of citizenship exists between Plaintiff and Defendant because Plaintiffs Jane and Julie Doe are citizens of the State of Texas, and Defendant MySpace is a citizen of the states of Delaware and California. The citizenship of the parties is the same now as it was at the time this lawsuit was filed.

2. Plaintiffs Jane Doe IX and Julie Doe IX are residents of Texas and, thus, citizens of Texas for jurisdictional purposes. *See* Appendix at Tab B (Second Amended Petition at ¶ 5). Plaintiffs' residence, and thus, citizenship, has not changed as of the date this notice is filed.

3. Defendant MySpace is incorporated under the laws of the State of Delaware and maintains its home office and principal place of business in Los Angeles, California. Thus, MySpace was a California and a Delaware citizen at the time this suit was filed, and it has

remained such a citizen through the time of the filing of this notice of removal. *See* Appendix at Tab C.

4. Accordingly, complete diversity exists in this case both now and at the time this suit was filed. Defendant is a citizen of a state other than Plaintiffs' home state of Texas.

B. The Amount in Controversy Exceeds $75,000.

1. The requisite amount of controversy in this lawsuit is at stake. Plaintiffs' Second Amended Petition does not allege an amount in controversy, nor does it specify that damages in excess of this Court's jurisdictional threshold are sought. Nevertheless, removal is proper here because it is facially apparent that Plaintiffs' claims "are likely above $75,000 in sum or value." *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882-83 (5th Cir. 2000); *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999). Removal is proper if the court, "in applying only common sense, would find that if Plaintiffs were successful . . . they would collect more than [$75,000]." *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995). This is clearly the case here.

2. In this lawsuit, Plaintiffs claim that MySpace provided an unprotected social networking website that allowed a sexual predator to contact, seduce, meet, and later assault 15-year-old Julie Doe IX. *See* Appendix at Tab B (Second Amended Petition at ¶¶ 1, 8). Plaintiffs request actual damages for Julie Doe IX's "pecuniary loss, mental anguish, psychological trauma, pain and suffering, and emotional distress, in the past and the future, as well as future medical and psychological counseling expenses." Appendix at Tab B (Second Amended Petition at p.14). Plaintiffs also seek to recover actual damages for Jane Doe IX's past and future "medical and psychological counseling expenses." *Id.* It is apparent from the foregoing allegations that the amount in controversy exceeds $75,000 and thus, the amount in controversy requirement is satisfied. *Gebbia*, 233 F.3d at 882-83 (finding amount in controversy facially

apparent where plaintiff alleged damages for pain and suffering, mental anguish, and medical expenses); *Luckett*, 171 F.3d at 298 (finding amount in controversy facially apparent where plaintiff alleged damages for property damage, medical bills, pain and suffering, and humiliation). Finally, in addition to the actual damages, Plaintiffs seek exemplary damages, punitive damages, and attorneys' fees.[1] Even if Plaintiffs' claims for actual damages were not sufficient, and they clearly are, their claims for punitive damages added to the claimed actual damages unquestionably exceed $75,000. *See Allen*, 63 F.3d at 1335.

3. Furthermore, the Court may look beyond the Petition to determine whether the requisite amount is at issue. *See Allen*, 63 F.3d at 1335 ("If [it is not facially apparent that the requisite jurisdictional amount is at stake], a removing attorney may support federal jurisdiction by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.") (citations omitted). In a separate Texas lawsuit filed by these same lawyers, alleging similar claims against MySpace, the plaintiffs requested $30 million in damages. Appendix at Tab F.

4. Thus, the amount in controversy exceeds $75,000, exclusive of interest and costs.

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[1] *See H&D Tire and Automotive-Hardware, Inc. v. Pitney Bowes, Inc.*, 227 F.3d 326, 328-29 (5th Cir. 2000) (court considered whether the "actual damages plus individual punitive damages" claimed by the class representatives exceeded the required amount in controversy to successfully remove the action); *In re Abbott Laboratories*, 51 F.3d 524 (5th Cir. 1995) (court found that the amount in controversy requirement was satisfied by looking at the damages claimed by the named plaintiffs in a class action); *Century Assets Corp. v. Solow*, 88 F. Supp. 2d 659, 660 (E.D. Tex. 2000) (punitive damages and attorneys' fees "are included in determining the amount in controversy for jurisdictional purposes"); *HWJ, Inc. v. Burlington Ins. Co.*, 926 F. Supp. 593 (E.D. Tex. 1996) (in finding that defendant met its burden to establish plaintiff's claims for, among other things, violations of the Texas Insurance Code and DTPA exceeded the amount in controversy requirement, the court considered the ability of plaintiff to collect treble damages in making its calculations); *Chittick v. Farmer's Ins. Exchange*, 844 F. Supp. 1153, 1155 (S.D. Tex. 1994) (the court considered plaintiff's claims for exemplary damages in its amount in controversy analysis); *see also Quebe v. Ford Motor Co.*, 908 F. Supp. 446, 452 (W.D. Tex. 1995) (the court considered the recovery of attorneys' fees on a pro rata basis in determining whether the amount in controversy requirement was met to establish diversity jurisdiction in a class action); *Goosens v. AT&T Corp.*, No. EP-00-CA-002-DB, 2000 WL 33348222, at *2 (W.D. Tex. April 3, 2000) (court considered claims for mental anguish, punitive damages and recovery of attorneys' fees in finding that plaintiff's damages exceeded the amount in controversy requirement).

C. This Notice is Timely.

1. This removal notice is timely, inasmuch as it was filed within thirty days after service of Plaintiffs' Second Amended Petition on MySpace on April 17, 2008. The Second Amended Petition was the first petition alleging diversity of citizenship and was the pleading that made this case removable. This Notice is also filed within thirty days of March 24, 2008, the date Defendant MySpace, Inc. was first served with any pleading in this case. Accordingly, by any measure, this Notice is timely.

2. 28 U.S.C. § 1446(b) provides that the "notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based."

3. Plaintiffs commenced this action on March 10, 2008, by filing Plaintiffs' Original Petition in the office of the Clerk of 235th Judicial District Court of Cooke County, Texas. Plaintiffs did not serve and Defendant MySpace did not receive service of Plaintiffs' Original Petition. On March 14, 2008, Plaintiffs filed Plaintiffs' First Amended Petition. Appendix at Tab B. MySpace received service of Plaintiffs' First Amended Petition on March 24, 2008. Plaintiffs' First Amended Petition did not allege diversity of citizenship. Rather, it alleged that Plaintiffs were California residents, concealing the existence of diversity of citizenship. Appendix at Tab B (Second Amended Petition at ¶ 5). On or about April 17, 2008, Plaintiffs filed their Second Amended Petition, which, for the first time, alleges that Jane Doe IX and Julie Doe IX are residents of Texas. Appendix at Tab B (Second Amended Petition at ¶ 5). Defendant MySpace received a copy of Plaintiffs' Second Amended Petition by electronic mail on April 17, 2008. As a result, this notice had to be filed by May 17, 2008. Nonetheless, it is also filed within thirty days of service of the First Amended Petition on March 24, 2008.

4. Accordingly, this notice of removal is timely filed in accordance with the provisions of 28 U.S.C. § 1446(b).

III.
CONSENT OF ALL DEFENDANTS

Defendant MySpace is the only defendant named in this lawsuit.

IV.
STATE COURT PAPERS AND SERVICE OF NOTICE

1. Defendant's notice of removal is procedurally correct and complies with the Local Rules.

2. Under Local Rule CV-81, the following documents are attached to this notice:

Tab A. A certified copy of the docket sheet in the state court action.

Tab B. True and correct copies of the documents on file with the state court. Defendant MySpace is not aware of any other process, pleadings, or orders filed in the state court action.

Tab C. Copy of on-line records reflecting MySpace, Inc.'s citizenship as maintained by the Delaware Secretary of State.

Tab D. List of all parties in the case, their party type, the current status of the removed case, list of all attorneys involved in the action being removed, and the name and address of the court from which the case is being removed.

Tab E. Defendant MySpace's Certificate of Interested Persons.

Tab F. Plaintiffs' First Amended Original Petition in *Jane Doe v. MySpace, Inc.*, No. D-1-GN-06-00209, in the 261st District Court for Travis County, Texas.

3. Defendant MySpace has tendered a filing fee of $350 to the Clerk of the United States District Court for the Eastern District of Texas, Sherman Division.

4. Pursuant to 28 U.S.C. § 1446(d), a notice of filing of this notice of removal, with a copy of this notice of removal attached, is being filed with the clerk of the 235th Judicial

District Court of Cooke County, Texas, and Defendant has sent, by certified mail, return receipt requested, written notice of the removal to Plaintiffs' attorney of record.

V. CONCLUSION

For the foregoing reasons, Defendant prays that this action be removed to this Court for determination, that all further proceedings in the state court suit be stayed, and that Defendant be granted all additional relief to which it may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR MYSPACE, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via certified mail, return receipt requested, on April 23, 2008.

Christopher V. Popov

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